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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 214

MRS. ABA BADGER SUTTLE, Widow of JOHN G. SUTTLE, etc.,

Petitioner,

versus

REICH BROS. CONSTRUCTION CO., ET AL.,

Respondents.

BRIEF ON BEHALF OF REICH BROS. CONSTRUCTION CO. AND INDIVIDUAL MEMBERS, Respondents.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1947.

No. 214.

MRS. ABA BADGER SUTTLE, Widow of JOHN G. SUTTLE, etc.,

Petitioner,

versus

REICH BROS. CONSTRUCTION CO., ET AL.,

Respondents.

BRIEF ON BEHALF OF REICH BROS. CONSTRUCTION CO. AND INDIVIDUAL MEMBERS, Respondents.

MAY IT PLEASE THE COURT:

This is a suit seeking damages in excess of $3,000 brought by citizens and residents of the State of Mississippi against citizens and residents of the State of Louisiana and a Texas corporation qualified to do business in the State of Louisiana, under the diversity of citizenship provisions of Title 28, U. S. C. A., Sec. 41(1).

STATEMENT OF CASE.

The state of Louisiana is comprised of two Federal Districts, Eastern and Western. Respondents are citizens and residents of the Western District of Louisiana. This suit was filed in the Eastern District of Louisiana.

The sole question here presented is the correctness of the ruling of the trial court in sustaining a motion to dismiss on the ground of improper venue as to respondents, which ruling was affirmed by the Circuit Court of Appeals, Fifth Circuit, 161 F. 2d 289. The *writ of certiorari* was granted by this Honorable Court at the October, 1947 term to review the decision of the Circuit Court of Appeals, *supra*.

Statutory law governing venue is found in Title 28, U. S. C. A., §112, 113; Judicial Code, §51, 52, which read as follows:

> "* * * no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but **where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant;** * * *." (Emphasis ours.)
>
> **"When a State contains more than one district, every suit** not of a local nature, **in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides;** but **if there are two or more defendants, re-**

siding in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides." (Emphasis ours.)

LAW AND ARGUMENT.

Being unaware as to which of the Reasons for Allowance of *Writ of Certiorari* appearing on pages 4 and 5 of the petition for writ actuated the granting of the application, we will answer the assigned errors in the order therein stated:

Appellant's Error No. 1.

"(1) The Honorable Circuit Court of Appeals for the 5th Circuit has rendered a decision which is in conflict with other decisions of the Circuit Courts of Appeals on the same matter and which is in conflict with decisions of this Honorable Court by holding that 'citizenship', as required for jurisdictional purposes in the Federal Courts, is synonymous with 'residence', as required for venue purposes in the Federal Courts, the principal ground upon which the judgment of the 5th Circuit Court of Appeals was based in this case being that, if the corporation-defendant was declared a resident for venue purposes, then it would thereby be a citizen for jurisdictional purposes."

Petitioner has failed to grasp during the entire course of this litigation the historic and fundamental relation-

ship as to the word "citizen" used in Title 28, U. S. C. A., Sec. 41(1), Judicial Code, Sec. 24, involving the jurisdiction or right of the court to adjudicate, and the words "inhabitant" and "resident" as used in the venue provisions of Title 28, U. S. C. A., Secs. 112-113, Judicial Code, Secs. 51-52, involving the place or jurisdiction in which the suit must be brought.

The reason for the use of the term "citizen" in the jurisdictional provision and use of the terms "inhabitant" and "resident" in the venue provisions of the Judicial Code was pointed out many years ago. It was stated that the word "inhabitant" was equivalent to the word "citizen" as used in Title 28, U. S. C. A., Sec. 112, providing that when a state contains more than one district every suit not of a local nature in the circuit or district courts thereof against a single defendant, inhabitant of such state, must be brought in the district where he resides, and was used to avoid the incongruity of speaking of citizens of anything less than a state, while the word inhabitant applies to a citizen of any district in a state which was divided into more than one district. *Firestone Tire & R. Co. v. Vehicle Equipment Co.*, 155 F. 676, citing *Galveston, H. & S. A. R. Co. v. Gonzales*, 14 S. Ct. 401, 151 U. S. 496, 38 L. Ed. 248.

There has been no deviation by this Honorable Court since the amendment of the Judiciary Act in 1888 from the legal proposition that when jurisdiction is founded on diversity of citizenship the terms "citizen", "inhabitant" and "resident" are synonymous within the meaning of Section 51 of the Judicial Code. It follows there

has been no deviation from the principle that a corporation cannot be a "citizen", "inhabitant" or "resident" of any state other than that in which it was created within the meaning of the jurisdiction and venue provisions of the Judicial Code.

"A corporation is not a citizen, inhabitant, or resident of a state in which it has not been incorporated, within the meaning of Act Aug. 13, 188, c. 866, requiring a civil suit to be brought in the district of which defendant is an inhabitant, or where the jurisdiction is founded on diverse citizenship, in the district of the residence of either plaintiff or defendant."

In re Keasbey & Mattison Co., (1895), 160 U. S. 221, 16 S. Ct. 273, and cases therein cited.

"A corporation is not a citizen, inhabitant, or resident of a state in which it has not been incorporated, within the meaning of statutes requiring a civil suit to be brought in the district of which defendant is an inhabitant, or, where the jurisdiction is founded on diverse citizenship, in the district of the residence of either plaintiff or defendant.

U. S. N. Y., 1895. In re Keasbey & Mattison Co., 16 S. Ct. 273, 160 U. S. 221, 40 L. Ed. 402.

C. C. Colo., 1895. Rust v. United States Waterworks Co., 70 F. 129, 17 C. C. A. 16.

C. C. Ill., 1888. Jessup v. Illinois Cent. R. Co., C. C., 36 F. 735.

C. C. Iowa, 1890. Myers v. Murray, Nelson & Co., C. C., 43 F. 695, 11 L. R. A. 216.

C. C. Mo., 1881. Eaton v. St. Louis Shakspear Mining & Smelting Co., C. C., 7 F. 139.

C. C. Mo., 1889. Booth v. St. Louis Fire Engine Mfg. Co., C. C., 40 F. 1.

C. C. N. Y., 1850. Day v. Newark India-Rubber Mfg. Co., Fed. Cas. No. 3,685, 1 Blatchf. 628, 1 Fish. Pat. Rep. 394.

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C. G. N. Y., 1890. National Typographic Co. v. New York Typographic Co., C. C., 44 F. 711.

C. C. Vt., 1870. Myers v. Dorr, Fed. Cas. No. 9,988, 13 Blatchf. 22, 20 Fed. Dig. 664.

To same effect, see also 35 C. J. S., Sec. 21, pg. 818, Federal Courts, and authorities cited; Title 28, U. S. C. A., Sec. 112, footnote 13, pg. 50, and authorities cited; Words and Phrases, Volume 21, Inhabit, etc., pg. 337 (citizen), pg. 340 (corporation); Annotation 119, A. L. R. 667, heading "II In General", and cases cited.

In the case of *Seaboard Rice Milling Co. v. Chicago, R. I. & P. Ry. Co.*, (1943) 46 S. Ct. 247, 270 U. S. 363, this Honorable Court held:

> "It is immaterial whether the general federal jurisdiction in the present suit is founded upon diversity of citizenship alone, or whether the suit is also one arising under the laws of the United States, since neither the Milling Company nor the Railway Company is a resident of the Eastern District of Missouri; a corporation being, within the meaning of the jurisdictional statutes, a resident of the State in which it is incorporated, and not a resident or inhabitant of any other State, although it may be engaged in business within such other State. In re Keasbey & Mattison Co., 16 S. Ct. 273, 160 U. S.

221, 229, 40 L. Ed. 402; Macon Grocery Co. v. Atlantic Coast Line, supra, 509; and cases cited."

For the purpose of showing unanimity of the lower courts in following the aforesaid principles of law as enunciated by this Honorable Court to the effect that the terms "citizen", "inhabitant" and "resident" are synonymous within the meaning of 28 U. S. C. A., Sec. 112, Judicial Code, Sec. 51, we quote from a few of such decisions as follows:

"'Citizen,' 'inhabitant,' and 'resident' are for jurisdictional purposes synonymous terms (Jud. Code §51 [28 U. S. C. A., §112])."

Standard Stoker Co., Inc. v. Lower, et al., 46 F. 2d 678.

"* * * But it is well established that the words 'inhabitant' and 'resident in', as used in Section 51 of the Judicial Code, mean neither more nor less than legal domicile, as the result of which jurisdiction except by consent is confined to the district in the State of which one or the other of the parties is a citizen. See Shaw v. Quincy Mining Co., 145 U. S. 444, 12 S. Ct. 935, 36 L. Ed. 768; In re Keasbey & Mattison Co., 160 U. S. 221, 228, 16 S. Ct. 273, 40 L. Ed. 402; Bicycle-Stepladder Co. v. Gordon, C. C., 57 F. 529; United States v. Gronich, D. C., 211 F. 548. Cf. Camp v. Gress, 250 U. S. 308, 39 S. Ct. 478, 63 L. Ed. 997; Putnam v. Ickes, 64 App. D. C. 339, 78 F. 2d 223; King v. Wall & Beaver Street Corporation, 145 F. 2d 377."

In the case of *Edgewater Realty Co. v. Tenn. Coal, Iron & Railroad Co.*, (1943) 49 F. 807;, the Court said:

> "* * * Since the jurisdiction of this Court in the present suit is grounded upon diversity of citizenship of the parties, whether this Court is the proper forum is governed by Section 51 of the Judicial Code, 28 U. S. C. A., §112, which provides that '* * * where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant.' It is well settled that for the purposes of this section, 'citizen', 'inhabitant' and 'resident' are synonymous terms and that, therefore, a corporation is a resident only of the State of its incorporation, and of the District (when that State comprises more than one District) of the corporation's head office,—Shaw v. Quincy Mining Co., 145 U. S. 444, 12 S. Ct. 935, 36 L. Ed. 768; In re Keasbey & Mattison Co., 160 U. S. 221, 16 S. Ct. 273, 40 L. Ed. 402,—and until very recently the requirement of Section 51 could not be waived. See Neirbo Co. v. Bethlehem Corp., 308 U. S. 165, 60 S. Ct. 153, 84 L. Ed. 167, 128 A. L. R. 1437. Thus, since Edgewater is a Maryland corporation, we find no difficulty as respects the question of venue."

See also *Anderson v. Standard Accident Ins. Co.*, 36 F. 7;

Vogel v. Crown Cork & Seal Co., Inc., 36 F. 74;

U. S. v. Phillips Petroleum Co., et al., 36 F. 480;

Richard v. Franklin County Distilling Co., 38 F. 513.

We are unable, in view of the above authorities, to acquiesce in the statement contained in the petition (Pg.

4) that the decision rendered in this cause by the Fifth Circuit Court is in conflict with decisions of this Honorable Court and other Circuit Courts on this point. We submit there is complete unanimity by the courts on this principle of law.

A review of the decisions quoted and referred to on pages 10, 11, 12 of petitioner's brief as constituting a conflict with authorities hereinabove cited emphasizes the statement heretofore made in this brief that petitioner has not grasped the issue presented. Without burdening the Court with individual treatment of each case cited by petitioner in substantiation of his contention, suffice it to say that all of the cases cited deal with the question of jurisdiction—the power to adjudicate—and correctly hold there must be a diversity of citizenship. We readily concede diversity of "residence" does not answer the requirements of 28 U. S. C. A., Sec. 41(1), but we submit that after diversity of "citizenship" has been established, and suit is brought in the state in which the defendant is a citizen, it must be brought in the district in which he is an inhabitant or in which he resides to meet the requirements of 28 U. S. C. A., Sec. 113. It is significant that not one of the cases cited by opposing counsel involved a corporation. The reason is obvious, since a corporation, unlike an individual, cannot change citizenship, and the factual question never arises. The corporation is always a "citizen", "inhabitant" or "resident" of the state of incorporation, while an individual may be a citizen of one state and reside in another.

The erroneous contention of petitioner that the co-defendant in this suit, Highway Insurance Underwriters, a Texas corporation, is a resident of the Eastern District of Louisiana within the meaning of the jurisdiction and venue provisions of the Judicial Code is necessarily based on the decision of this Honorable Court in the case of *Neirbo v. Bethlehem Shipbuilding Corp.*, 308 U. S. 165, 84 L. Ed. 167, 60 S. Ct. 153. Opposing counsel apparently overlooked the following statement in the opinion, which was the very basis of the holding:

> "The suit was based on diversity of citizenship and was not brought 'in the district of the residence of either the plaintiff or the defendant.'"

Your Honors subsequently, in the case of *Mississippi Pub. Corporation v. Murphree*, 326 U. S. 438, 66 S. Ct. 242, reiterated the finding of the Neirbo case quoted above and affirmed the jurisprudence which had been followed since the amendment of the Judiciary Act in 1888 to the effect that a corporation is a citizen or resident only of the state of its organization for purposes of jurisdiction, in the following language (Pg. 244):

> "* * * Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U. S. 165, 60 S. Ct. 153, 84 L. Ed. 167, 128 A. L. R. 1437, on which petitioner relies, supports no different conclusion. There the sole ground of jurisdiction was diversity of citizenship of the parties. The foreign corporation was sued in the district court for southern New York, in which neither the plaintiff nor the defendant was a citizen or resident,[2] but where the defendant was doing business, maintained an office, and had consented to be sued by appoint-

ing a resident agent to receive service of process. Recognizing that §51 of the Judicial Code, in cases where the jurisdiction is founded on diversity of citizenship, establishes venue as the place where the suit may be maintained for the convenience of the parties, and that the statutory venue for a suit of which the court has jurisdiction may be waived, we held that the corporation had waived objections to venue by its consent to the suit. * * *"

The footnote indicated by the numeral 2 above, and which is part of the decision, reads as follows:

"[2]For purposes of jurisdiction a corporation is a citizen or resident only of the State of its organization. Shaw v. Quincy Mining Co., 145 U. S. 444, 451, 12 S. Ct. 935, 938, 36 L. Ed. 768; In re Keasbey & Mattison Co., 160 U. S. 221, 229, 16 S. Ct. 273, 275, 40 L. Ed. 402; Macon Grocery Co. v. Atlantic Coast Line R. Co., 215 U. S. 501, 509, 30 S. Ct. 184, 187, 54 L. Ed. 300; Seaboard Rice Milling Co. v. Chicago, etc., Ry. Co., 270 U. S. 363, 366, 46 S. Ct. 247, 248, 70 L. Ed. 633."

Appellant's Error No. 2.

"(2) The Honorable Circuit Court of Appeals for the 5th Circuit has decided an important question of local law in a way clearly in conflict with applicable local decisions by holding that the corporation-defendant in this case is a non-resident of the State of Louisiana, whereas the laws and jurisprudence of the State of Louisiana make said corporation a resident of that State, the question as to whether or not a party is a resident of a state being a question to be determined by the law of the state."

This proposition could not be seriously contended. It is hornbook law that in determining jurisdiction and venue under federal statutes, the federal courts look to their own regulations, laws and procedure. The legal question as to the state of citizenship and residence of a litigant in the federal courts when jurisdiction and venue were involved, is and has always been determined by federal law, and state laws pertaining thereto were inapplicable.

Every instance in which a state has attempted to restrict or enlarge the jurisdiction of federal courts has been ruled unconstitutional. There is a line of decisions holding unconstitutional legislation by a number of states seeking to deny a foreign corporation access to the federal courts as a condition precedent to doing business in the particular state.

It is axiomatic under our system of courts, that the determination of jurisdiction and venue is an inherent power and goes to the very foundation of the existence of our courts.

To hold that a state could by legislation or jurisprudence make a foreign corporation a citizen or resident thereof, so as to deprive such corporation of its constitutional right of access to the federal courts, is unthinkable. Furthermore, should the federal courts attempt to determine citizenship and residence under the jurisdiction and venue statutes of every litigant according to the laws of the states in which each might have resided, there

would result a hodgepodge of jurisprudence of unimaginable proportions.

However, there is no need of conjecture as to existing law on this point. Your Honors stated in the case of *Mississippi Pub. Corporation v. Murphree, supra,* that:

> "* * * And since the consent is to suits in the federal courts, it is a consent to suits brought in conformity to the federal regulations governing the jurisdiction, venue and procedure of those courts. Ex parte Schollenberger, supra, 96 U. S. 377, 24 L. Ed. 853; Neirbo Co. v. Bethlehem Shipbuilding Corp., supra, 308 U. S. 175, 60 S. Ct. 158, 84 L. Ed. 167, 128 A. L. R. 1437."

For the purpose of showing the rule of law enunciated by Your Honors in the *Mississippi Publishing Corporation* case above is no innovation, we quote from the case of *Anderson, et ux v. Standard Accident Insurance Company,* 36 F. Supp. 7, to indicate prior decisions on the same point:

> "In any event, the operation of no State law respecting the venue of causes can impair the jurisdiction and power of the District Courts of the United States. Goldey v. Morning News of New Haven, 1895, 156 U. S. 518, 15 S. Ct. 559, 39 L. Ed. 517; East Tennessee, V. & G. R. Co., et al. vs. Atlanta & F. R. Co., C. C. S. D., Georgia, W. D., 1892, 49 F. 608, 15 L. R. A. 109; Butler Bros. Shoe Co. v. U. S. Rubber Co., 8 Cir., 1907, 156 F. 1; Creager v. P. F. Collier & Son Co., et al., D. C. S. D., Texas, Brownsville, 1929, 36 F. 2d 781; Junk v. R. J. Reynolds Tobacco Co., D. C. W. D., Virginia, 1938, 24 F. Supp. 716."

The brief of petitioner fails to cite one case or authority in substantiation of the contention contained in this assigned error.

Appellant's Error No. 3.

"(3) The Honorable Circuit Court of Appeals for the 5th Circuit has decided an important question of Federal law which has not been but should be settled in this Court, in holding that under Section 113 of Title 28, U. S. C. A., a defendant, citizen and resident of one Federal District of the State cannot be sued in another Federal District of the State where a co-defendant is properly suable."

What the Circuit Court of Appeals for the Fifth Circuit actually held was that when suit was brought under the diversity of citizenship provisions of the Judicial Code in the state in which the defendant was a citizen, and such suit was not brought in the district in which the defendant resided under 28 U. S. C. A. 113, that the joinder as co-defendant of a non-resident of such state who had waived the right to object to venue, did not deprive the resident defendant of his statutory right to object to improper venue.

The untenable position of petitioner is this: That if a citizen of Mississippi brings suit in the Eastern District of Louisiana against a citizen and resident of the Western District of Louisiana and a citizen and resident of Texas, and the citizen of Texas submits to the venue in the Eastern District Court, then the resident of the Western District is bound thereby and is deprived of his rights

under the Judicial Code to be sued in the Western District. Such a result is not only inconceivable within the plain intent of the statutory law, but clearly in direct conflict and disregard thereof.

The provisions of 28 U. S. C. A. 113 are simply one additional step in meeting the requirements of legal venue. The first requirement is found in 28 U. S. C. A. 112 that suit must be brought in the state of the residence of either plaintiff or defendant; if brought in the state of the residence of defendant, and the state is comprised of more than one district, then in the district in which the defendant resides. How can respondent herein be said to have waived this right and privilege granted by law through the act of a co-defendant who is in fact a non-resident of the state? We submit the question answers itself, and adversely to the contention of petitioner.

We attribute complete lack of jurisprudence (with one following exception) on this point to the fact that the provisions of the law are unambiguous and the obvious inequitable result which would come about should one person be deprived of a statutory right by the act of another.

The only case found in which such a contention has been made is that of *Beneficial Industrial Loan Corporation, et al. v. Kline, et al.*, (Iowa) 41 F. 854. Here suit was brought by citizens of Del. are in the Southern district of Iowa against two residents of the Northern district, with jurisdiction founded on diversity of citizenship. One of the defendants answered the complaint,

which was held to constitute a waiver of proper venue. The plaintiff contended such waiver was effective as to the other defendant who had seasonably objected. Pertinent syllabus of the case by which the court disposed of plaintiff's contention reads as follows:

> "A defendant's waiver of proper venue which entitled him to be sued in district of his residence does not constitute a 'waiver' by co-defendant of his right to be sued in district of his residence. Jud. Code, §51, 52; 28 U. S. C. A., §112, 113."

Appellant's Error No. 4.

> "(4) The Honorable Circuit Court of Appeals for the 5th Circuit has decided a Federal question in a way probably in conflict with the applicable decisions of this Court in holding that the partnership-defendant and the members thereof were not properly suable outside of the district of their residence, and refusing to consider the question of an implied waiver or consent by said defendants to be sued outside of the district of their residence."

The foregoing reason for allowance of the writ is without substantiation either by citation of authority or reasonable argument. To contend that the jurisdiction and venue provisions of the Judicial Code are abrogated by reason of a citizen of one state entering into a contract of insurance with a non-resident is obviously so unsound as to require no answer. The same treatment is applicable to the contention that a resident individual may be sued in any district in his state in which he is conducting or operating a business. To so hold would be

tantamount to legislating, which is a prerogative of Congress.

APPELLANT'S BRIEF.

On page 4 of petitioner's brief it is stated:

> "The primary error in the Circuit Court of Appeals was in confusing citizenship with residence. If the terms as used in the venue statute are synonymous that Court was correct; otherwise, it was manifestly wrong. Since the law does not define 'residence' and no definition of residence can be found in any other Act of Congress, it is necessary to look to the law of the State to ascertain whether or not a person or corporation is a resident of such state. The authorities support this claim."

We think the decisions of this Honorable Court and authorities of the federal inferior courts referred to *supra* in this brief conclusively demonstrate that citizenship and residence of a corporation are synonymous within the meaning of the jurisdiction and venue provisions of the Judicial Code in diversity of citizenship suits.

Opposing counsel has cited numerous decisions of the state courts of Louisiana with respect to what constitutes residence. These decisions are manifestly inapplicable and therefore will not be answered. The courts of Louisiana may hold and the General Assembly of Louisiana may legislate, that a foreign corporation upon qualifying to do business in the state thereby becomes a citi-

zen or resident, but until Congress acts or this Honorable Court reverses jurisprudence of sixty years standing, a foreign corporation will continue to be a citizen and resident only of the state of its incorporation within the meaning of the jurisdiction and venue provisions of the Judicial Code.

To hold, as petitioner contends in this case, that the Highway Insurance Underwriters, a Texas corporation, is a resident of the Eastern District of Louisiana where the agent for service or process resides, would be equivalent to overruling the decision of this Honorable Court in the case of *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U. S. 4, 60 S. Ct. 215, which held that a foreign corporation, following appointment of an agent, could be sued by a non-resident in any district of the state under the venue provisions. Consequently, should it be held, as petitioner contends, that suit must be instituted in the district in which the agent resides, such holding would be in conflict with the Oklahoma case *supra*.

When counsel for petitioner concede that (1) were respondents the only defendants, then proper venue would be in the Western District; (2) were the co-defendant, Highway Insurance Underwriters, the sole defendant, then proper venue would be in either district; (3) that the Western District would have proper venue had the suit been brought against both defendants in such district, then we submit petitioner has, in effect, acknowledged the contention urged of proper venue as to both

defendants in the Eastern District to be erroneous in law.

CONCLUSION.

In conclusion, we submit that:

(1) Reich Bros. Construction Co. and the individual members thereof, respondents herein, are residents and inhabitants of the Western District of Louisiana.

(2) Under the provisions of the Judicial Code, Section 52, respondents, when suit is brought against them in Louisiana, are accorded the statutory right to be sued in the district in which they reside.

(3) The question of whether the co-defendant, Highway Insurance Underwriters, is a citizen, resident or inhabitant of any state other than that in which incorporated (Texas), within the meaning of such terms as used in the Judicial Code, Sections 24, 51 and 52 for the purpose of determining venue in federal courts, is controlled entirely by federal laws, regulations and procedure and not according to the laws of the individual states.

(4) The federal law is now and has always been well established and crystallized to the effect that a corporation can be a citizen, inhabitant and resident of no other state than that in which incorporated in determining proper venue and jurisdiction of suits in federal courts.

(5) The "consent doctrine" of waiver of venue enunciated by this Honorable Court in the Neirbo decision affirmatively rejected the contention made therein that a

foreign corporation becomes a resident of the state in which it appointed an agent for process.

(6) To hold in this case that the co-defendant Texas corporation is a resident of Louisiana, for purpose of fixing venue when sued by non-resident, would have the effect of depriving citizens and residents of Louisiana of the right to sue foreign corporations in the federal courts of such state, and foreign corporations the right to remove to federal courts when sued by local residents in the state courts, since both plaintiff and defendant would be residents of Louisiana.

(7) The waiver of venue requirement by a defendant cannot have the effect of depriving a co-defendant of the right to object to improper venue which is accorded under the provisions of the Judicial Code.

We respectfully submit the decision of the Circuit Court of Appeals, Fifth Circuit, affirming the judgment of the trial court in holding that the Eastern District of Louisiana was not a court of proper venue with respect to respondents, was manifestly correct and should be affirmed.

Respectfully submitted,

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CERTIFICATE.

I hereby certify that a copy of the foregoing brief has this day been served on counsel for appellant by depositing a copy thereof in the United States mail properly addressed.

Lake Charles, Louisiana, December 9., 1947.

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Attorney for Respondents.